

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

NO.: 7:07-CV-176-H

JERRY PARKER, et al.,

Plaintiffs,

v.

SMITHFIELD PACKING COMPANY, INC.,
and PREMIUM STANDARD FARMS, LLC,

Defendants.

ORDER

This matter is before the court on defendants' motion to decertify the conditionally certified class approved by the court [DE #220]. United States Magistrate Judge James E. Gates filed a Memorandum and Recommendation ("M&R") on August 23, 2010, recommending that defendants' motion be denied. (Mem. & Recommendation [DE #281].) Defendants object to the M&R, arguing (1) that Judge Gates improperly placed upon defendants the burden to demonstrate that class certification is not warranted in this case; and (2) that decertification of the class is necessary because the plaintiffs are not similarly situated.

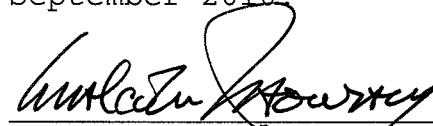
Defendants' first objection is based upon Judge Gates' statement that "[d]efendants have not shown, however, that these

differences in the computation of gang time undermine the similarities that otherwise prevail with respect to donning and doffing activities." (Mem. & Recommendation at 8.) In so stating, Judge Gates did not place the burden of proof upon defendants. Rather, Judge Gates found that plaintiffs had met their burden of demonstrating that they are similarly situated because each of them (1) is an hourly employee; (2) working at the same production facility; (3) on the production line; (4) is paid according to a gang-time system; (5) is required to wear protective equipment; and (6) is subject to a uniform policy or practice of being paid a specified amount of time ranging from three to twenty-seven minutes per day for donning and doffing activities. The statement upon which defendants rely is simply a rejection of their argument that the similarities among the plaintiffs are outweighed by the differences in the way gang time was computed for different job positions and departments.

A full and careful review of the M&R and other documents of record convinces the court that the recommendation of the magistrate judge is, in all respects, in accordance with the law and should be approved. Judge Gates correctly determined that the factual and employment settings of the individual plaintiffs are sufficiently similar to warrant class certification, that defendants have raised defenses that pertain to large groups of the class (if not to the class in its entirety), and that

procedural and fairness considerations weigh in favor of class certification. Accordingly, the court ADOPTS the recommendation of the magistrate judge as its own. For the reasons stated in the M&R, defendants' motion to decertify the class [DE #220] is DENIED.

This 24th day of September 2010.



MALCOLM J. HOWARD
Senior United States District Judge

At Greenville, NC
#31